

2009 DRAFTING REQUEST

Bill

Received: **09/24/2008**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Palchik**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure**

Extra Copies: **TJD**

Submit via email: **NO**

Pre Topic:

DOA:.....Palchik, BB0082 -

Topic:

Assisted living licensing and certification fees

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	rryan 10/09/2008	nmatzke 10/14/2008	rschluet 10/14/2008	_____	sbasford 10/14/2008		State
/2	rryan 01/30/2009	nmatzke 01/30/2009	rschluet 01/30/2009	_____	cduerst 01/30/2009		

FE Sent For:

<END>

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/1	rryan 10/09/2008	nnatzke 10/14/2008 /2 Rwn 1/30	rschluet 10/14/2008		sbasford 10/14/2008		

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/?	rryan	11 nwn 10/13 1 10/14 jld		==			

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Assisted Living Licensing and Certification Fees
- Tracking Code: BB0082
- SBO team: Health and Insurance
- SBO analyst: Laurie Palchik
 - Phone: 266-2214
 - Email: laurie.palchik@wisconsin.gov
- Agency acronym: DHS
- Agency number: 435
- Priority (Low, Medium, High): Medium

Intent:

- 1) Amend s. 50.037(2) to increase biennial license fees for Community Based Residential Facilities (CBRF) to \$389 plus \$50.25 per resident and to allow the department to increase the fee by rule.
- 2) Amend s. 50.033(2) to increase the biennial license fee for Adult Family Homes to \$171 and to allow the department to increase the fee by rule.
- 3) Amend s. 49.45(47)(c) to increase the biennial fee for Adult Day Care to \$127.
- 4) Seek statutory language change to allow the department to permanently use surplus balances in the caregiver background check program (Appropriation 624) toward the deficits in the assisted living program (Appropriation 639). Allow transfer of balances between the two appropriations.

(See Attached)

10/19/08 - Call to Laurie:
Does DOT want this piece (#4)?

Answer: NO

Assisted Living Licensing and Certification Fees

Decision Needed

Should fees for assisted living providers be increased to better align program revenue with program expenditures?

Background

1. The Bureau of Assisted Living in the Division of Quality Assurance (DQA) licenses and certifies assisted living facilities. Current law requires three of the four assisted living providers (i.e., community based residential facilities, adult family homes and adult day care centers) to be licensed to operate in the state. Current law does not require residential care apartment complexes (RCAC) to be licensed to operate in the state, but they must be certified in order to receive reimbursement from the Community Options Program or Medical Assistance and to house clients of these programs. (RCACs that serve only private paying tenants must register with the Department.) Funding for the assisted living program comes from three sources: GPR (37%), Medicaid (33%), and program revenue (PR) fees (30%) charged to assisted living facility providers for the licensing and certification of the four assisted living facilities provider types.
2. There are four types of residential assisted living facilities in Wisconsin: community based residential facilities (CBRFs), adult family homes (AFHs), adult day care (ADCs), and residential care apartment complexes (RCACs). None of these facilities are subject to federal regulations; all are regulated strictly by the state.
3. Residents of assisted living facilities include the elderly and people with disabilities. Utilization of assisted living facilities has grown and is expected to continue to grow with intermediate care facilities for the mentally retarded (ICF/MR) rebalancing, the nursing home relocation initiative, continued relocation from state centers, and the statewide expansion of Family Care. At the same time, the relocation of residents from nursing homes and ICF/MRs to assisted living facilities has resulted in higher acuity levels among assisted living residents.
4. The fees charged to assisted living facilities vary depending upon the type of facility and are summarized in the table below. Fees for RCACs were last set in 1997; fees were last increased for the remaining provider types in 2000.

Summary of Existing Fees for Assisted Living Facilities			
Provider Type	Facility	Unit Fee	Frequency
CBRFs 5 or more beds	\$306.00	\$39.60 per resident	Biennial
Adult family homes with 3 or 4 beds	\$135.00	None	Biennial
Adult day care	\$100.00	None	Biennial
Resident care apartment complexes, certified	\$350.00	\$6.00 per apt.	Annual

5. RCACs who serve only private paying tenants register with the Department, and no fees are assessed. However, the certification of RCACs is required in order for the facility to receive reimbursements from the Community Options Program (COP) or Medical Assistance (MA) program and to house clients of these programs.
6. The Assisted Living Fee appropriation has significant, ongoing revenue deficit. The appropriation ended FY 08 with an accumulated deficit of (\$1,204,300), with costs exceeding revenues received in FY 08 by \$343,651. The deficit will continue to grow significantly unless measures are taken.
7. To address the ongoing annual deficit in the Assisted Living program, the Department proposes to increase fees for CBRFs, AFHs, ADCs, and certified RCACs by 27%. This increase, along with a separate DHS proposal to assess a fee for required verification revisits by DQA licensing staff, is projected to increase annual revenues so that they equal annual costs in the program.
8. Fees collected for the assisted living program are deposited in Appropriation 639. Appropriation 639 is part of a larger alpha (i.e., Wis. Stat. 20.435 6(jm)) appropriation, which is composed of fees the Department assesses on several other health care providers. Other fee sub-appropriations and the departmental programs they support and found in 6(jm) are as follows:
 - 624 – Caregiver Background Check
 - 634 – Health Facility Plan Review
 - 637 – Health Facility Licensing (i.e., hospital, hospices, nursing home and home health agencies)
 - 639 – Licensing and Support (i.e., alcohol and drug abuse (AODA) program certification and assisted living)
9. The other programs in 6(jm) — other than assisted living — finished FY08 with a surplus. However, the overall alpha appropriation 6 (jm) ended FY08 with a deficit of (\$335,844) due to the deficit in the assisted living program. The Department intends to address the cumulative deficits in the assisted living program (639) by transferring positive balances in caregiver background check program (624) to offset the deficits in the assisted living program. The Department would need a statutory language change to do so because the current statutes do not allow caregiver background check program revenues to be used for assisted living program expenses. The Department would seek this statutory language

change to permanently allow the Department to use surplus balances in the caregiver background check fee program (624) to address the cumulative deficit in the assisted living program (639).

Current Language

Fees for assisted living providers are established both in Wisconsin statutes and administrative code:

Facility Type	State Statute or Administrative Code establishing fee
CBRFs	s. 50.037 (2), Wis. Stats., "...biennial fee is ... \$306, plus a biennial fee of "\$39.60 per resident...."
AFHs	s. 50.033 (2), Wis. Stats., "... biennial licensure fee ... is \$135."
ADC	s.49.45 (47) (c), Wis. Stats., "...biennial fee ... is \$100." s.49.45 (47) (d), Wis. Stats., "The Department, by rule may increase any fee specified in par. (c)."
RCAC, Certified	HFS 89.53 (3), Wis. Adm. Code, "... in an amount determined by the Department...."

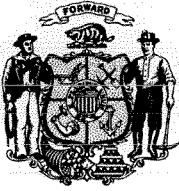
The Department's authority to assess caregiver background check fees is under s. 50.065(8) and s. 48.685(8).

Proposed Change

1. Amend s. 50.037(2) to increase biennial license fees for CBRFs to \$389 plus \$50.25 per resident and to allow the Department to increase the fee by rule.
2. Amend s. 50.033(2) to increase the biennial license fee for AFHs to \$171 and to allow the Department to increase the fee by rule.
3. Amend s. 49.45(47)(c) to increase the biennial fee for ADCs to \$127.
4. Seek statutory language change to allow the Department to permanently use surplus balances in the caregiver background check program (Appropriation 624) toward the deficits in the Assisted Living Program (Appropriation 639).

transfer between lines within one appropriation - can already accomplish with DTA OK

Desired Effective Date: July 1, 2009
Agency: DHS
Agency Contact: Andy Forsaith
Phone: 266-7684



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-03957

RLR:.....

nwn+

jld

In 10/9/08

DOA:.....Palchik, BB0082✓ - Assisted living licensing and certification fees

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA ✓
X-ref ✓

Rmk
D-N

4

don't gen.✓

1 AN ACT ...; relating to: the budget.✓

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES✓

LONG-TERM CARE✓

Under current law, DHS licenses community-based residential facilities (CBRFs) and adult family homes (AFHs), and, for purposes of reimbursement under MA, certifies adult day care centers (ADCCs). The licensure fees for CBRFs and AFHs, as well as the certification fee for ADCCs, are established by statute. In addition, current law authorizes DHS to increase the certification fee for ADCCs by rule.

This bill increases the licensure fees for CBRFs and AFHs and the certification fee for ADCCs. In addition, the bill grants DHS authority to increase the licensure fees for CBRFs and AFHs by rule.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

SECTION 1. 49.45 (47) (c) of the statutes is amended to read:

1 49.45 (47) (c) The biennial fee for the certification required under par. (b) of an
 2 adult day care center is \$100 \$127. Fees collected under this paragraph shall be
 3 credited to the appropriation account under s. 20.435 (6) (jm).

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441; 2007 a. 20 ss. 1513 to 1559h, 9121 (6) (a); 2007 a. 90, 97, 104, 141, 153.

4 **SECTION 2.** 50.033 (2) of the statutes is amended to read:

5 50.033 (2) REGULATION. Standards for operation of licensed adult family homes
 6 and procedures for application for licensure, monitoring, inspection, revocation and
 7 appeal of revocation under this section shall be under rules promulgated by the
 8 department under s. 50.02 (2) (am) 2. An adult family home licensure is valid until
 9 revoked under this section. Licensure is not transferable. The biennial licensure fee
 10 for a licensed adult family home is \$135 \$171, except that the department may, by
 11 rule, increase the amount of the fee. The fee is payable to the county department
 12 under s. 46.215, 46.22, 46.23, 51.42 or 51.437, if the county department licenses the
 13 adult family home under sub. (1m) (b), and is payable to the department, on a
 14 schedule determined by the department if the department licenses the adult family
 15 home under sub. (1m) (b).

History: 1993 a. 327; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2007 a. 20.

16 **SECTION 3.** 50.037 (2) (a) of the statutes is renumbered 50.037 (2) (a) 1. and
 17 amended to read:

18 50.037 (2) (a) 1. The Except as provided in subd. 2., the biennial fee for a
 19 community-based residential facility is \$306 \$389, plus a biennial fee of \$39.60
 20 \$50.25 per resident, based on the number of residents that the facility is licensed to
 21 serve.

History: 1973 c. 90, 243, 333; 1975 c. 413 s. 18; 1975 c. 430 ss. 73, 80; 1977 c. 26, 418; 1979 c. 221; 1983 a. 27; 1987 a. 161 s. 13m; 1991 a. 39; 1993 a. 16; 1993 a. 27 ss. 253 to 256; Stats. 1993 s. 50.037; 1993 a. 183, 375; 1995 a. 27; 1997 a. 27; 1999 a. 9.

22 **SECTION 4.** 50.037 (2) (a) 2. of the statutes is created to read:

3 (END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0395/1dn

RLR:|:....

nwn+

jcd

Date

Laurie:

DHS requested authority to use caregiver background check fee revenue to fund regulatory activities related to assisted living facilities without having to obtain authority from DOA to transfer funds between programs within an appropriation. As we discussed, DOA does not support this change, so it is not included in the draft.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0395/1dn
RLR:nwn&jld:rs

October 14, 2008

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0395/1
RLR:nwn&jld:rs

DOA:.....Palchik, BB0082 - Assisted living licensing and certification fees
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

RMR
B2N

1 ^{don't gen.} AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

LONG-TERM CARE

Under current law, DHS licenses community-based residential facilities (CBRFs) and adult family homes (AFHs), and, for purposes of reimbursement under the Medical Assistance program, certifies adult day care centers (ADCCs). The licensure fees for CBRFs and AFHs, as well as the certification fee for ADCCs, are established by statute. In addition, current law authorizes DHS to increase the certification fee for ADCCs by rule.

This bill increases the licensure fees for CBRFs and AFHs and the certification fee for ADCCs. In addition, the bill grants DHS authority to increase the licensure fees for CBRFs and AFHs by rule.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 49.45 (47) (c) of the statutes is amended to read:

Except as provided in sub. (2d) standards

1 49.45 (47) (c) The biennial fee for the certification required under par. (b) of an
2 adult day care center is \$100 \$127. Fees collected under this paragraph shall be
3 credited to the appropriation account under s. 20.435 (6) (jm).

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7 appeal of revocation under this section shall be under rules promulgated by the
8 department under s. 50.02 (2) (am) 2. An adult family home licensure is valid until
9 revoked under this section. Licensure is not transferable. The biennial licensure fee
10 for a licensed adult family home is \$135 \$171, except that the department may, by
11 rule, increase the amount of the fee. The fee is payable to the county department
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JNS
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21 serve.

22 SECTION 4. 50.037 (2) (a) 2. of the statutes is created to read:

23 50.037 (2) (a) 2. The department may, by rule, increase the amount of the fee
24 under subd. 1.

25 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0395/2ins
RLR:.....

1

Ins 2-15:

***NOTE: This is reconciled s. 50.033 (2). This SECTION has been affected by drafts with the following LRB numbers: 0395 and 1308.

-0395/1 and -1308/P3

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

LRB-0395/2dn

RLR:f:....

nwn

0395/1

1304/P3

This draft reconciles LRB-0395 and LRB-1308. All of these drafts should continue to appear in the compiled bill.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0395/2dn

RLR:wnn:rs

January 30, 2009

This draft reconciles LRB-0395/1 and LRB-1308/P3. All of these drafts should continue to appear in the compiled bill.

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0395/2
RLR:wnw&jld:rs

DOA:.....Palchik, BB0082 - Assisted living licensing and certification fees
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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9 2. An adult family home licensure is valid until revoked under this section.
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 ****NOTE: This is reconciled s. 50.033 (2). This SECTION has been affected by drafts
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3 (END)